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6 UNITED STATES BANKRUPTCY COURT
7
8 NORTHERN DISTRICT OF CALIFORNIA

9
10 In re:

Case No. 19-51427
Chapter 13

11 MANZANARES, Efrain

12 MANZANARES, Nora

13 Debtor(s)
14 _____/

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO EXTEND AUTOMATIC
STAY**

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17 I. Section
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19 Section 362(c)(3)(A) of the Bankruptcy Code provides that the
20 Automatic Stay under sect. 362(a) shall terminate on the 30th day following the case
21 filing if the debtor had a previous bankruptcy case pending within the previous year. Sect.
22 (c)(3)(B), however, provides that the court may extend the Automatic Stay past the initial
23 30 days if a party in interest demonstrates that the filing of the later case is in good faith
24 as to the creditors to be stayed.
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1 Section(c)(3)(C) lists certain fact situations which raise the presumption that the
2 new filing is not in good faith. Such presumptions, if they arise at all, may be rebutted by
3 clear and convincing evidence:

4 --That there has not been a substantial change in the financial or personal affairs of the
5 debtor since the earlier case dismissal, or any other reason not to conclude that the new
6 case will be concluded with a confirmed plan that will be fully performed.
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10 II. Certain presumptions not applicable in this case.

11 In the earlier case the debtors did not fail to file or amend a document as required
12 by title 11 or court order. In the determination of good faith, therefore, the only
13 presumptions that might apply are (a) failure to make their Plan payments and (b)
14 possible lack of good faith if (1) there has not been a substantial change in the financial
15 or personal affairs of the debtor since the earlier case was dismissed, or (2) if there is any
16 reason to conclude that the present case will not be concluded with a confirmed plan that
17 will be fully performed.
18

19 III. Changes in circumstances

20 The Court's primary inquiry in this motion is whether the debtors
21 present case is filed in good faith. This inquiry's primary focus is whether there is a
22 substantial change in the debtors' financial or personal affairs since the time of the
23 previous case. As stated in the debtors' Declaration in Support of Motion, they filed their
24 previous case on April 26, 2018 primarily because of a decline in their income and to
25 prevent foreclosure of their home.
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28 Their order of dismissal was filed on April 29, 2019.

1 The debtors have now re-filed their case mainly because of the overwhelming
2 debt, to avoid a wage order and seek relief from all of their unsecured creditors. With a
3 new 60-month maximum term they propose a Plan payment that they can afford.
4

5 IV. Application of *In re Warren* factors

6 The general determination of good faith may be made through the
7 application of the factors stated in (*In re Warren*, 89 B.R. 87(9TH Cir., 1998).
8

9 a. The amount of the proposed payments and the amount of the

10 Debtors' surplus: The debtors propose to pay \$1,975.00 monthly payable over 60
11 months which includes the debtors' monthly mortgage payments. After the
12 debtors' monthly expenses are accounted for, they will have sufficient disposable
13 income for the Plan payments.
14

15 b. The debtors employment history, ability to earn and likelihood

16 of future increases in income: Mr. Efrain Manzanares is currently employed full-
17 time at Mann Packing as a Forklift Operator and earns approximately \$4,907.40
18 gross monthly. The debtors have sufficient income to cover their Chapter 13 plan
19 payment as well as meet their monthly living expenses.
20

21 c. The expected duration of the Plan: The debtors propose payments
22 for 60 months.

23 d. The accuracy of the statement of debts, expenses and percentage

24 of repayment of unsecured debt and whether any inaccuracies are an attempt to
25 mislead the court: The debtors' Petition, Schedules, and Plan are believed to be
26 accurate.
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- 1 e. The extent of preferential treatment between classes of
2 creditors. The secured claim of Ocwen Loan Servicing will be paid through the
3 debtors' Chapter 13 Plan. There is no classification of other unsecured claims.
4
- 5 f. The extent to which secured claims are modified:
6 (1) Unsecured claims will receive 0 cents on the dollar.
- 7 g. The type of debt proposed to be discharged and whether any such debt is non-
8 dischargeable in Chapter 13: The claims non-dischargeable in this case are priority
9 tax debts owed to the IRS and Franchise Tax Board. As to general unsecured claims
10 the payment distribution is 0%.
11
- 12 h. Special circumstances such as inordinate medical expenses: The debtors' unsecured
13 claims are primarily credit card debt.
- 14 i. The frequency with which the debtor has sought bankruptcy relief. This is the
15 debtors' second bankruptcy filing.
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- 17 j. The motivation and sincerity of the debtors in seeking Chapter 13 relief: Mr. and
18 Mrs. Manzanares originally filed a Chapter 13 bankruptcy case to stop a pending
19 foreclosure as they were no longer able to pay back their creditors due to loss of
20 income after Mrs. Manzanares suffered a stroke. After the filing of their case, they
21 instantly gained immediate relief from all creditors. However, several months into
22 their case, they began to struggle financially when Mr. Manzanares had a reduction
23 work hours. This made it very difficult for Mr. and Mrs. Manzanares to keep up
24 with their household expenses. Due to working less hours, Mr. and Mrs. Manzanares
25 became unable to remit their monthly mortgage payments and as such were unable
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1 to provide their quarterly declaration with verification of payments and a sa result
2 their case was dismissed.

- 3 k. The burden which the Plan's administration places upon the Trustee: No unusual
4 burden is expected.
5

6 V. Conclusion

7 Based on the above factors the debtors request that this Court determine that this
8 case filing is done in good faith and that no presumption of lack of bad faith
9 arises, and to therefore continue the Automatic Stay past the initial thirty-day
10 period.

11 Respectfully submitted,

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13 Dated: July 17, 2019

14 /s/Jason Vogelpohl 252407
15 JASON VOGELPOHL
16 Attorney for Debtors
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